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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,921	11/21/2003	Wade Martin Poteet	86581-0003	7563
24633	7590	01/30/2008		
HOGAN & HARTSON LLP IP GROUP, COLUMBIA SQUARE 555 THIRTEENTH STREET, N.W. WASHINGTON, DC 20004			EXAMINER BRYANT, MICHAEL C	
			ART UNIT 2884	PAPER NUMBER
			NOTIFICATION DATE 01/30/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dcptopatent@hhlaw.com

## Office Action Summary

Application No.

10/717,921

Applicant(s)

POTEET ET AL.

Examiner

Casey Bryant

Art Unit

2884

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8-28,31-35,38-42 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,5,8-28,31-35 and 46-48 is/are allowed.
- 6) ☒ Claim(s) 38-42 and 44 is/are rejected.
- 7) ☒ Claim(s) 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Claims Status**

1. Applicant's reply, filed 11/08/2007, has been received and entered. Claims 1, 8, 39, 40 and 45 have been amended. Claims 2, 3, 6, 7, 29, 30, 36, 37 and 43 have been cancelled. Claims 46-48 have been added. Thus, claims 1, 4, 5, 8-28, 32-35, 38-42 and 45-48 remain currently pending in this application.

### **Allowable Subject Matter**

2. Claims 1, 4, 5, 8-28, 32-35 and 45-48 are allowed.

3. Claim 45 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 45, 47 and 48, the prior art of record teaches a light minimizing enclosure for a fluorescence spectrometer suited for preventing external light from contaminating spectroscopic measurements, but prior art fails to teach or fairly suggest, in combination with the other elements, wherein the enclosure is spherical.

5. The following is a statement of reasons for the indication of allowable subject matter: the reasons for indication of allowable subject matter for claims 1, 4, 5, 8-28, 32-35 were provided in the Office action dated 5/17/2007.

6. The indicated allowability of claims 38-44 is withdrawn in view of the newly discovered reference(s) to Dou et al (US 5617205). Rejections based on the newly cited reference(s) follow.

### Claim Rejections – 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cole et al.** (hereafter “Cole”)(US 2003/0160231) in view of **Hodgkinson** (GB 2365966 A), **Kaufman** (US 2002/0197728) and **Dou et al.** (hereafter “Dou”)(US 5617205).

With respect to claims 38, 40 and 46, Cole discloses an UV fluorescence detector having an excitation light source (Figure 5) **510**, a sample platform **520**, a UV detector **114**; and an analysis module for matching the induced fluorescence to a predetermined signature spectrum [0037], but does not teach a first optic for directing excitation light to the sample platform **520**, a controller for monitoring the excitation light spectrum stabilization, or a power source for providing power to the light source, sample platform, detector and analysis module. Hodgkinson teaches an UV fluorescence device with optics for directing the excitation light to the sample-receiving platform (Figure 2, element A). Kaufman teaches the use of a camera in a method and system for fluorescence detection (Figure 2, element 234). It would have been obvious at the time of invention to one of ordinary skill in the art to use the optics of Hodgkinson in the apparatus of Cole and a camera platform to facilitate the use of a camera as taught by Kaufman. Using optics to direct the light would allow a more precise delivery of the excitation light to the sample and permit varied configurations of the device. The use of a camera platform would allow positioning of the camera device relative to the sample. Additionally, Dou discloses Raman spectrometer comprising a controller **60** for monitoring and correcting fluctuations in an excitation light (Figure 2)(column 7,

lines 6-17). In view of the improved measuring accuracy provided by the excitation light controller taught by Dou, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Cole to specify such a controller (column 3, line 63-column 4, line 12). Finally, it would have been obvious to one of ordinary skill in the art to specify a power source for supplying power to the various elements (light source, detector, processor etc.) of the device in order for the device operate.

With respect to claim 39, Cole and Dou teach the claimed invention expect for a handheld scanner. Hodgkinson teaches a hand-held scanner connected to a UV detector via fiber optic materials (page 6, lines 1-6). It would have been obvious at the time of invention to one of ordinary skill in the art to use a handheld scanner in order to allow the apparatus to be field-portable.

With respect to claim 41, Cole does not teach the laser source is between 1 and 250 mJ. It would have been obvious at the time of invention to one of ordinary skill in the art to use a laser source between .1 and 250 mJ. This would allow for a proper amount of energy to be imparted to the sample under observation.

With respect to claim 42, Coles fails to teach using a pulsed laser source. Dou teaches using a pulsed laser source (Nd:YAG). It to would have been obvious to one of ordinary skill in the art at the time the invention was made since pulse lasers are known to achieve a higher power output than continuous lasers.

9. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Cole** in view of **Hodgkinson, Kaufman, Dou, and Heffelfinger et al.** (hereafter "Heffelfinger")(US 6043506).

With respect to claim 44, Cole does not teach a light minimizing enclosure. Light tight enclosures are known in the art, as taught by Heffelfinger (Figure 7)(col. 11, line 65-col. 12, line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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specify a light minimizing enclosure in the device of Cole, as taught by Heffelfinger, in order to ensure the elimination of influences from outside light.

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Casey Bryant whose telephone number is (571) 270-1282. The examiner can normally be reached on Monday - Friday, 8am - 5pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on (571)272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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